BORA LASKIN LAW LIBRARY
31761 10083989 3

Materials on Contracts

John Swan
Ernest J. Weinrib
Barry J. Reiter

1976

Volume 2

Store
KF
801
A7
S83
1976
v.2

LAW LIBRARY
AUG 31 1976

Materials on Contracts

John Swan
Ernest J. Weinrib
Barry J. Reiter

1976

Volume II

These materials are for use by students in the Faculty of Law, University of Toronto only, and are not for publication outside the Faculty of Law or for commercial sale.

Summary Table Of Contents

CONTRACTS

Introduction

Chap. 1. Remedies For Breach Of Contract

1. The Interests Protected
2. Specific Performance And Injunctions
3. Remoteness Of Damage
4. Special Kinds Of Losses And Problems Of Calculation
   (a) The Range Of The Interests Protected
   (b) Special Problems of Calculation
5. Mitigation
6. Assumpsit And Restitution
7. Liquidated Damages And Penalty Clauses

Chap. 2. The Kinds of Promises That The Law Will Enforce

1. Introduction
2. Formal Validity of Contracts
3. Consideration
   (a) The Bargain Theory
   (b) Past Consideration
   (c) Mutual Promises
   (d) Performance Of Legal Duty As Consideration
   (e) Reliance As A Basis For Enforcement

Chap. 3. The Creation Of The Contract

1. Introduction
2. The Classical Theory Of Offer And Acceptance
   (a) What Is An Offer?
   (b) When Do Negotiation Come To An End? The Problem Of Indefiniteness
   (c) The Power Of Acceptance
3. "The Battle Of The Forms"
4. Offers Calling For An Act, Not A Promise

Chap. 4. Misunderstandings, Misrepresentation And Mistakes

1. Interpretation And Implication
2. Warranties And Misrepresentations
3. Mistakes (Including Frustration)
4. Mistakes Involving Third Parties

Chap. 5. The Effect Of Non-Performance By The Plaintiff

1. Excuses For The Defendant's Non-Performance: Herein Of Conditions
   (a) The Effect Of Express Conditions
   (b) The Technique Of Implying A Condition
2. Excuses For The Plaintiff's Non-Performance
3. Restitution In The Event Of The Plaintiff's Breach

Chap. 6. The Control Of Contract Power

1. Introduction
2. The Parol Evidence Rule
3. Standard Form Contracts
   (a) The "Ticket Cases"
   (b) Signed Contracts
4. Unconscionability
5. The Legislative Response

Chap. 7. Prohibited Contracts, Illegality, Public Policy And Unenforceable Contracts

1. Prohibited And Illegal Contracts
2. Infants' Contracts
3. Statute Of Frauds

Chap. 8. Assignment

1. Introduction
2. The Requirements Of A Valid Assignment
3. Priorities Between Competing Assignments

Chap. 9. Agency

1. The Relation Of Principal And Third Party
2. The Relation Of Agent And Third Party
3. The Relation Of Principal And Agent

Chap. 10. Third Party Beneficiaries

Table of Contents

Chapter 2. The Kinds of Promises That The Law Will Enforce

1. Introduction 295

Fuller & Eisenberg 298
Fuller, Consideration and Form 313

2. Formal Validity of Contracts 339

Extract from Dawson & Harvey 341
Chilliback v. Pawliuk 344

3. Consideration 348

(a) The Bargain Theory 348

White v. Bluett 350
Thomas v. Thomas 351
Hamer v. Sidway 353
Gilmore, The Death of Contract 357
Stoltze v. Fuller 366
Barton v. Armstrong 372
Post v. Jones 379
Bastsakis v. Demotsis 381

(b) Past Consideration 384

Mills v. Wyman 385
Webb v. McGowin 389
Eastwood v. Kenyon 391
Roscorla v. Thomas 396
Note on Infants' Contracts and the effect of the Statute of Limitations 398

(c) Mutual Promises 399

Greenberg v. Lake Simcoe Ice Supply Co. 401
G.N.R. v. Witham 403
Bernstein v. W.B. Mfg. Co. 407
Fuller & Eisenberg 408
Wood v. Lucy, Lady Duff-Gordon 413
U.C.C. § 2.306(2) & Comment 414
Stewart Macaulay, The Standardized Contracts of United States Automobile Manufactures 417

(d) Performance of a Legal Duty as Consideration: Modification and Waiver of Contractual Duties 434

Harris v. Watson 434

Stilk v. Myrick 435
Raggow v. Scougall 437
Smith v. Dawson 438
Gilbert Steel Ltd. v. University Construction Ltd. 440
Foakes v. Beer 445
The Mercantile Law Amendment Act 451
Rommeril v. Gardener 452
Champlain Ready-Mixed Cement v. Beaupré 455
Fairgrief v. Ellis 457
Scotson v. Pegg 460
Shadwell v. Shadwell 461
De Cicco v. Schweitzer 464

(e) Reliance as a Basis For the Enforcement of Promises ... 467

Central London Property Trust Ltd. v. High Trees
House Ltd. 467
Imperator Realty v. Tull 471
Combe v. Combe 474
D. & C. Builders v. Rees 479
Watson v. Canada Permenant Trust Co. 484
Skidmore v. Bradford 491
Baxter v. Jones 495
Sloan v. Union Oil Co. of Canada 502
Dalhousie College v. Boutilier Estate 506
Re Ross 516
Balfour v. Balfour 520
Jones v. Padavatton 527
Simpkins v. Pays 533
Llewellyn: What Price Contract? An Essay in Perspective .. 536

Chapter 3. Making The Contract

1. Introduction 540

Raffles v. Wichelhaus 543
Henkel v. Pape 545
Hobbs v. Esquimalt and Nanaimo Railway Co. 547

2. The Classical Theory of Offer and Acceptance 552

(a) What is an offer? 552

Johnston Bros. v. Rogers Bros. 552
Denton v. G.N.R. 555
Lefkowitz v. Great Minneapolis Surplus Store 558
Pharmaceutical Society v. Boots 561

(b) When Do Negotiations Come To An End? The Problem of Indefiniteness 565

May v. Butcher Ltd. v. The King 567
W.N. Hillas & Co. Ltd. v. Arcos Ltd. 571
Jewson v. Arcos 580
Foley v. Classique Coaches, Ltd. 584
Brown v. Gould 590
Lake Ontario Cement Ltd. v. Golden Eagle Oil Ltd 595
Knapp, Enforcing the Contract to Bargain 607
Brewer Street Investments v. Barclays Woollen Co. Ltd. 609

(c) The Power of Acceptance 612

Dickinson v. Dodds 614
Bristol, Cardiff and Swansea Aerated Bread Co. v. Maggs 621
Harvey v. Perry 625
Adams v. Lindsell 630
Household Insurance v. Grant 632
Tinn v. Hoffmann 643
Eliason v. Henshaw 649
Wheeler v. Klaholt 652

3. The Battle of The Forms 653

Matter of Doughboy Industries Inc. 654
Roto-Lith, Ltd. v. F.P. Bartlett & Co. 660
Uniform Commercial Code, § 2-207 663
Fuller, Law's Precarious Hold On Life 667

4. Offers Calling for An Act Not A Promise 681

Carlill v. Carbolic Smoke Ball Co. 682
Williams v. Carwardine 692

Fitch v. Snedaker 693
The Crown v. Clarke 695
Petterson v. Pattberg 702
Errington v. Errington 705
Dawson v. Helicopter Exploration Co. Ltd. 708